

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DOUGLAS JENDRAS,	)	Case No. 11-cv-05409-SC
	)	
Plaintiff,	)	ORDER RE: TRIAL PREPARATION
	)	<u>FOR JUDGE SAMUEL CONTI</u>
-against-	)	
	)	
ABOVENET, INC.,	)	
	)	
Defendant.	)	
	)	

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Please be advised that this case has been transferred to me for trial during my assignment in the Southern District of New York. The case is set for trial on October 21, 2013 at 9:30 a.m. Courtroom 9A, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York. A pre-trial conference shall be held in Courtroom 9A on October 18, 2013 at 9:30 a.m.

I am aware that Judge Karas has retained jurisdiction over this case for the purpose of deciding Defendant's motion to strike Plaintiff's demand for a jury trial. In the event that Judge Karas rules in favor of Defendant and strikes Plaintiff's jury demand, the parties shall comply with the bench trial instructions set forth below. In the event that Judge Karas rules in favor of Plaintiff, the parties shall comply with the jury trial instructions set forth below.

**BENCH TRIAL INSTRUCTIONS**

No later than ten (10) days before trial, each party shall serve upon all other parties and lodge with this court two (2) copies of the following:

(1) Proposed Findings of Fact and Conclusions of Law. An MS Word copy of the Proposed Findings shall also be emailed to Judge Conti's clerk at adam\_shapiro@cand.uscourts.gov.

(2) A trial brief.

(3) A list of exhibits. Upon request of a party, any party shall make the original of any exhibit available for inspection and/or copying.

(4) A list of witnesses, including expert witnesses, in the expected order of their presentation. The witness list shall also include:

(a) a brief statement as to the content of the witness's testimony; and

(b) an estimate of the time of the witness's testimony, on both direct and cross examination.

No witnesses other than those on said list shall be allowed to testify, except upon express order of this court. Any expert testimony shall strictly comply with Federal Rule of Civil Procedure 26(a). Any Daubert objections to the testimony of any expert or witness should be raised with the Court by motion ten (10) days before trial, or the objection is WAIVED.

(5) A statement designating all excerpts from depositions (specifying the witness's name, with page and line references), answers to interrogatories, and responses to requests for admission to be offered at trial for any purpose other than impeachment or rebuttal.

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## JURY TRIAL INSTRUCTIONS

### A. Required Pretrial Submissions

No later than ten (10) days before trial, each party shall serve upon all other parties and lodge with this Court two identical copies of the following:

(1) A JOINT agreed-upon, brief statement of the case to be read to the jury prior to trial.

(2) Proposed voir dire questions.

(3) A trial brief.

(4) A list of exhibits. Upon request of a party, any party shall make the original of any exhibit available for inspection and/or copying.

(5) A list of witnesses, including expert witnesses, in the expected order of their presentation. The witness list shall also include:

(a) a brief statement as to the content of the witness's testimony;

(b) an estimate of the time of the witness's testimony, on both direct and cross examination.

Any expert testimony shall strictly comply with Federal Rule of Civil Procedure 26(a)(2). Any Daubert objections to the testimony of any expert or witness should be raised with the Court by motion ten (10) days before trial, or the objection is WAIVED. No witnesses other than those on said list shall be allowed to testify, except upon express order of this Court.

(6) A statement designating all excerpts from depositions (specifying the witness's name, with page and line references),

answers to interrogatories, and responses to requests for admission to be offered at trial for any purpose other than impeachment or rebuttal.

(7) JOINT jury instructions (see Section B infra).

(8) A proposed form of verdict.

Additionally, each party shall serve upon all other parties and lodge with this Court the original and one (1) copy of their motions in limine. Motions in limine will be heard at the pre-trial conference. Motions in limine are to be filed and served no later than ten (10) days prior to the pre-trial conference. Any oppositions are to be filed and served no later than five (5) days prior to the pre-trial conference.

**B. Proposed Jury Instructions**

No later than ten (10) days before the trial date, the parties shall lodge with the court two (2) identical sets of JOINT proposed jury instructions. In addition, the parties shall email a third copy of the proposed jury instruction to the clerk (adam\_shapiro@cand.uscourts.gov) in Microsoft Word format.

The parties are ordered to meet, confer and prepare said complete set of jury instructions. This complete set of all proposed instructions upon which the parties agree must include all standard instructions regarding the role of jurors, organization of the jury, communication with the Court, etc. Failure to submit an agreed-upon instruction on a matter of law as to which there is no substantial ground for difference of

opinion may be considered a sufficient ground for the imposition of sanctions on counsel.

Each individual proposed instruction shall be concise, free from argument, and typewritten on separate pages. Each proposed instruction shall include the heading "JURY INSTRUCTION NO. \_\_\_\_" centered at the top of the first page of the instruction.

Each set shall include two (2) separate copies of the proposed instructions. Each instruction in the first copy shall include a title briefly stating the general subject matter of the instruction and shall be free from citation to supporting authority or other extraneous references. Each instruction in the second copy shall include citations to supporting authority whenever available, but shall be identical to the instruction in the first copy in all other respects.

With each set of instructions, the parties shall include an index to the proposed instructions.

#### **EXHIBIT BINDER INSTRUCTIONS**

Regardless of whether this case is tried by jury, the parties shall comply with the following instructions regarding exhibit binders. Exhibits that can be legibly reduced to 8.5" by 11" form (e.g., written documents, photographs, etc.) shall be placed in three-ring binders with each exhibit number-tabbed on the side. A copy of the exhibit list should be placed in the front of the binder. Binders should be clearly labeled on the outside as to which party's exhibits and what exhibit numbers they contain. The parties should prepare four (4) sets of

binders: one for the Court, one for the witness to refer to, one for the Court Clerk to act as the original, and one for the law clerk. The original copy should have an exhibit marker attached to the first page of each exhibit in the lower right hand corner. The exhibit markers must appear substantially in the following form:

United States District Court  
Southern District of New York

Case No. \_\_\_\_\_  
{Name of Party}'s Exhibit No. \_\_\_\_\_  
Date Entered: \_\_\_\_\_  
Clerk, United States District Court  
By: \_\_\_\_\_  
Deputy Clerk

These binders are to be delivered directly to Judge Conti's chambers in New York no later than three (3) days before the date of trial. They are not to be filed in the Clerk's Office.

IT IS SO ORDERED.

Dated: August 27, 2013

  
UNITED STATES DISTRICT JUDGE